

VZCZCXYZ0003  
RR RUEHWEB

DE RUCNDT #1109/01 3371311  
ZNR UUUUU ZZH  
R 031311Z DEC 07  
FM USMISSION USUN NEW YORK  
TO SECSTATE WASHDC 3245

UNCLAS USUN NEW YORK 001109

SIPDIS

SIPDIS

E.O. 12958: N/A

TAGS: [UNGA](#) [UNGA](#) [UNGA](#)

SUBJECT: SIXTH COMMITTEE DIVIDED OVER NEW SYSTEM OF  
ADMINISTRATION OF JUSTICE

REF: USUN 1020

¶1. SUMMARY: At the conclusion of its sixty-second session, the Sixth Committee had yet to reach consensus on a number of key issues concerning the legal aspects of the proposed reform of the UN system of administration of justice, a measure that the UN Advisory Committee on Administrative and Budgetary Questions (ACABQ) estimated will cost 56.2 million dollars to implement. In its draft decision (reftel), the Sixth Committee deferred consideration of many substantive issues it plans to revisit in an ad hoc committee that will convene in April 2008. The General Assembly's Fifth Committee (Administrative and Budgetary Questions) began its consideration of the proposed reforms on November 8 and may resolve some of the issues the Sixth Committee could not. END SUMMARY.

¶2. In an October briefing to the Sixth Committee, the ACABQ Chairman said the full implementation of the new system of internal justice at the UN would cost 56.2 million dollars. The new proposed system of administration of justice is intended to replace the UN's current system beginning in January 2009. By the conclusion of its sixty-second session, however, the Sixth Committee had yet to reach consensus on many key issues.

¶3. The Sixth Committee's discussions on the legal aspects of the proposed new system of administration of justice centered on the scope of the new system, legal assistance for staff, the informal and formal systems of justice, and transitional measures. The basic disagreement over how to reform the system of justice was between delegations that argued that the legal principles of transparency and fairness should be given primary consideration without regard to administrative and budgetary implications, and those delegations (namely, the U.S. and Japan) that argued for reform that reinforced transparency and fairness, but also considered the administrative feasibility of the Committee's proposals.

¶4. As to the scope of the new system, the only agreement reached in the Sixth Committee was that staff covered by the current system of internal justice would be covered under the new system. Beyond this basic agreement, delegations' views varied among those arguing to limit access to direct-hire UN staff and those advocating a system that granted access to any person working for the UN or a UN mission, without regard to whether they are staff or non-staff. Many delegations, notably the EU, argued that all personnel categories should have recourse to a system of justice. USUN pointed out that contractors and non-staff members had access to justice through local remedies, or as stipulated in their contracts. In the end, delegations chose to postpone a decision on scope and request more information about the different categories of non-staff, their access to justice, and the types of grievances such employees have raised in the past.

¶5. The provision of legal assistance to UN staff was another contentious issue. Most delegations felt strongly that

existing legal assistance for staff should be expanded. The Secretary-General's Report recommended the establishment of

#### SIPDIS

an Office of Legal Assistance staffed by 11 lawyers who would provide advice and serve as counsel of record on behalf of employees involved in litigation against the UN. USUN was most vocal in opposing the Secretary-General's proposal, particularly the idea that legal assistance should include representation in litigation. Delegations that favored litigation assistance argued the UN system was so unique that employees would not be able to hire well-qualified outside counsel to represent them in a dispute. The Sixth Committee agreed to support the idea of legal assistance in general (consistent with General Assembly Resolution 61/261) with the understanding that further consideration should be given to how best to enhance the current system.

16. Delegations were able to agree on many issues related to the informal system of justice. Delegations said that staff and management should be encouraged to use mediation in dispute settlement whenever possible and that access to mediation should be made available to all staff members. There was disagreement, however, over whether the United Nations Dispute Tribunal (UNDT) could refer parties to mediation. Portugal opposed giving the UNDT such authority, arguing that the decision to enter into mediation was voluntary. Other delegations countered that granting UNDT the right to refer to mediation would facilitate non-litigious dispute settlement.

17. The Sixth Committee reserved many elements of the formal system of justice for further consideration. Delegations reached general agreement about the desired qualifications of judges serving on the UNDT or the United Nations Appeal Tribunal (UNAT), and agreed that the General Assembly should approve the appointment and dismissal of judges. However,

delegations could not reach consensus on a mechanism for compiling a list of judges eligible for appointment. Delegations also argued about whether cases before the UNDT should be heard by a three-judge panel, or a single judge. Most delegates agreed that judges should be appointed for one term; however, the Committee could not decide on the length of the term, for which suggestions ranged between five and seven years.

18. Delegates reached virtually no agreement regarding the jurisdiction and powers of the UNDT and UNAT. A significant point of disagreement was whether or not the UNAT should hear questions of mixed fact and law, or only questions of law. Many NAM delegations supported a UNAT with the power to hear both aspects, arguing that this was the only way to guarantee a fair second hearing. Furthermore, proponents of this view said the authority to hear questions of mixed fact would allow UNAT to consider new evidence and review possible errors made by UNDT, as appropriate. The EU said the UNAT should address both fact and law if only one judge considers claims in the UNDT, due to the risk that the UNDT judge might be biased due to cultural or other factors. As to registries, some delegations said that a single registry would be appropriate if the role envisaged for the registry was purely administrative. However, if the registry would provide assistance to judges and conduct legal research, many delegations would favor a separate registry for UNDT and UNAT.

19. The Sixth Committee's conclusion paper on administration of justice did not address transitional measures for transferring outstanding cases to the new system; however, delegations did comment on this issue during the debate. One proposal was to assign the new UNAT with the task of hearing cases from the old system until the backlog of old cases is eliminated. Some delegations, however, balked at the notion of maintaining parallel justice systems. Another suggestion was simply to transfer old cases to the new system in January 2009, although some delegations worried that differences in

the legal standards used to adjudicate cases in the old and new system could create problems. Delegations also raised the question of how international organizations that use the old UNAT as their administrative tribunal, such as the International Maritime Organization, will fit into the new system of administration of justice.

Khalilzad